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March 14, 2017

Via FOIA Online (E-mail: r2foia@epa.gov)
and Certified Mail, Return Receipt Requested

EPA, Regional Freedom of Information Officer
U.S. EPA, Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

Re: **Freedom of Information Act Request for Records Regarding
EPA Enforcement Officer, OSC and Supervisor CAA-Stationary
Source and CERCLA Inspection Programs Training**

Dear FOIA Officer:

Aireko Construction Company ("Aireko" or "Requester") through the undersigned, requests disclosure of records pursuant to the Freedom of Information Act, as amended ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency ("EPA") regulations at 40 C.F.R. §§2.100-2.406.

In this request, the term "records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, documents, reports, records, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, facsimile logs, telephone records, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and other documents and writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored), all jointly referred to as "Records".

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Note that this request specifically seeks responsive records in or on the personal computers, cellphones or other devices, or personal email accounts used by EPA staff if used for any government purpose.

1. Description of Records Sought

Requested records pertain to Agency supervision of and compliance with Training Requirements applicable to certain Agency employees and their first-line supervisors stationed at the EPA Caribbean Environmental Protection Division ("CEPD"). These employees, in the course of performing official duties under inspection Programs for Clean Air Act ("CAA") stationary sources and Comprehensive Environmental Resource, Compensation and Liability Act ("CERCLA")¹ facilities acted, on or about May 12-15, 2012, in their capacity as Enforcement Officer ("EO") and/or On-Scene Coordinator ("OSC") during the investigation of incidents involving demolition activities. Investigated demolition activities related to office space renovations at the North Tower of the Minillas Government Center Complex in San Juan, Puerto Rico ("Minillas North Tower").

The investigation started on or about May 15, 2012, when CEPD Air Program EO, Carlos M. Rivera Velazquez (F15953),² conducted an asbestos related inspection under the National Emission Standards for Hazardous Air Pollutants ("NESHAPS"). It continued on May 16, 2012 with Air Program personnel and CEPD OSC, Ángel C. Rodriguez (F15721). On this day OSC Rodriguez, through external contractor Weston Solutions, Inc. ("Weston"), performed a removal action assessment that included the taking of 21 wipe samples at the Minillas North Tower. Four (4) days later, without previously consulting EPA Region 2 management or Agency for Toxic Substances and Disease Registry ("ATSDR") risk assessors, relying principally if not exclusively on wipe sample results, which he had been cautioned by the Weston contractor were unsuitable for determining existing risk exposure

¹ On June 7, 2016 the Office of Inspector General ("OIG") notified plans to begin an evaluation of the EPA's Clean Air Act inspector training program in order to determine whether EPA Clean Air Act inspectors have met all training requirements. On March 14, 2017, OIG notified cancellation of its' evaluation of Clean Air Act Inspector Training upon determination that the EPA Office of Enforcement and Compliance Assurance Plans to initiate an internal review of inspector qualifications in April 2017.

² EPA Id. number.

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levels at the Minillas North Tower,³ OSC Rodríguez ordered the mandatory evacuation or closure of said government building.

The Records sought pertain to EPA supervision of training requirements applicable to: (1) Carlos M. Rivera Velazquez (F15953), (2) Ángel C. Rodríguez (F15721), (3) José M. Soto (F14891) and Francisco Claudio (F14881), all of which, on or about May, 2012, held positions as “Enforcement Officer” (all hereinafter jointly referred to as “EOs”) ⁴ at EPA. Records sought also pertain to prior compliance with Training Requirements, by the EOs and OSC, and their respective first-line supervisors, all of whom, in the course of performing official duties, acted in said capacity and exercised authority in relation to the incidents that occurred at Minillas North Tower in May 2012.

Please produce records of the following types in EPA’s possession, custody or control that refer or relate to the following in any way within twenty (20) business days:

(1) EOs and their respective first-line supervisors’ compliance, prior to June, 2012, with training requirements applicable to EPA employees performing, or supervising the performance, of inspections and investigations under the CAA-Stationary and CERCLA Inspection Programs. Training requirements, for present purposes relevant, are detailed in the following EPA documents and are herein jointly referred to as “EPA Training Requirements”:

A. *EPA Order 3500.1 - Training and Development
Individuals Who Lead Compliance
Inspections/Field Investigations* (1988).

³ On May 19, 2012, Carlos L. Huertas, a contractor of Weston, retained by EPA to collect wipe samples at Minillas North Tower advised Mr Rodriguez as follows: “Please find attached the preliminary data summary table for the samples collected at the Centro Minillas ER on May 16, 2012. This data have not been through any form validation, data review, or quality assessment, they should be solely used for screening and/or informational purposes and not be used to make definitive environmental decisions.” On the following May 21, 2012, Mr. Huertas informed OSC Rodríguez as follows: “After confirming with our specialist there are no action levels for wipe samples. This is a screening tool. Air samples are the standard for clearance purposes.”

⁴ Mr. Rodríguez also occupied the position of CERLCA OSC.

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- B. *Revised Executive Order 3500.1 - Training and Development For Individuals Who Lead Compliance Inspections/Field Investigations*, Approval Date 12/23/2002; Review Date 12/23/2005.
- C. *Framework for Investigating Asbestos-Contaminated Superfund Site*, OSWER Directive 9200.0-68, Sept. 30, 2008.
- D. *Training Requirements and Professional Development Guidelines for U.S. EPA On-Scene Coordinators*, August 2011.

(2) If not already disclosed in response to *supra* section (1), Records that refer or relate to the following in any way:

- A. EO compliance, prior to June 2012, with EPA Training Requirements.
- B. EO non-compliance, prior to June 2012, with EPA Training Requirements.
- C. The first-line supervisors in May 2012 of EOs described in immediately above paragraphs "A" and "B".
- D. EO first-line supervisors that, prior to June 2012, had complied with EPA Training Requirements.
- E. EO first-line supervisors that, prior to June 2012, had not complied with EPA Training Requirements.

(3) If not already disclosed in response to *supra* sections (1) - (2), inclusive, Records that refer or relate to the following in any way:

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- A. EOs taking health and safety curriculum minimum 24 hours training prior to June 2012, in satisfaction of EPA Training Requirement.
- B. EOs taking Basic Inspector curriculum trainings prior to June 2012, in satisfaction of EPA Training Requirements.
- C. EOs taking CAA and CERCLA Program-specific trainings prior to June 2012 in satisfaction of EPA Training Requirements.

(4) If not already disclosed in response to *supra* sections (1) - (3), inclusive, Records that refer or relate to the following in any way:

- A. EOs first-line supervisors taking health and safety requirements training prior to May 21, 2012 in satisfaction of EPA Training Requirements.
- B. EOs first-line supervisors taking basic inspector trainings requirements prior to June 2012 in satisfaction of EPA Training Requirements. .
- C. EOs first-line supervisors self study of CAA and CERCLA Inspection Programs prior to June 2012 in satisfaction of EPA Training Requirements.

(5) If not already disclosed in response to *supra* sections (1) - (4), inclusive, Records that refer or relate to the following in any way:

- A. Issuance of credentials to EOs, before March 2013, without documentation establishing that minimum EPA Training Requirements had been met.
- B. EO noncompliance with CAA and CERCLA Program Specific refresher training before June 2012.

(6) If not already disclosed in response to *supra* sections (1) - (4), inclusive, Records that refer or relate to the following in any way:

- A. Audits of CEPD compliance, prior to June 2012, with EPA Order 3500.1 Training Requirements.
- B. Exemptions granted to EOs, prior to June 2012, waiving compliance with any or all EPA Training Requirements.

(7) If not already disclosed in response to *supra* sections (1) - (6), inclusive, Records that refer or relate to the following in any way:

- A. Statements signed by Ángel Rodriguez about completion, prior to June 2012, with EPA Training Requirements.
- B. Certifications issued by EPA or CEPD Division Directors concerning competency demonstrated by EOs prior to June 2012.
- C. Refresher courses taken by Ángel C. Rodriguez, prior to June 2012 to comply with OSWER Directive 9295.9-05⁵ Professional development, 80-hours yearly training requirement.

(8) If not already disclosed in response to *supra* sections (1)-(7), inclusive, Records that refer or relate to the following in any way:

- A. Issuance of credentials to Ángel C. Rodriguez (F15721) on July 11, 2011.
- B. Issuance of credential to José Soto (F14891) on July 15, 2010.

⁵ Issued on September 29, 1989.

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- C. Issuance of credentials to Francisco Claudio (F14881) on July 15, 2010.
- D. Issuance of credential to Carlos Rivera Velazquez (F15953) on March 23, 2012.

(9) If not already disclosed in response to *supra* sections (1)-(8), inclusive, Records that refer or relate to the following in any way:

- A. Expiration on February 28, 2013 of credentials issued to Ángel C. Rodriguez (F15721) on July 11, 2011.
- B. Expiration on February 28, 2013 of credentials issued to José Soto (F14891) on July 15, 2010.
- C. Expiration on February 28, 2013 of credentials issued to Francisco Claudio (F14881) July 15, 2010.
- D. Expiration on February 28, 2013 of credentials issued to Carlos M. Rivera Velazquez (F15953) on March 23, 2012.

(10) If not already disclosed in response to *supra* sections (1) - (7), inclusive, Records that refer or relate to the following in any way:

- A. External (non-EPA provider) or internal (EPA provider) courses taken by EOs, prior to June 2012, and relevant training received, including on-the-job training, in order to comply with EPA Training Requirements.
- B. External (non-EPA provider) or internal (EPA provider) courses taken by EOs' first-line supervisors prior to June 2012, and relevant training received, including on-the-job training, in order to comply with EPA Training Requirements.

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If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaugh v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), cert denied, 415 U.S. 977 (1974). Additionally, any reasonably segregable portion of a responsive record must be provided to me after redaction of any allegedly exempt material, as the law requires. 5 U.S.C. § 552(b).

2. Requester status for Fee Purposes

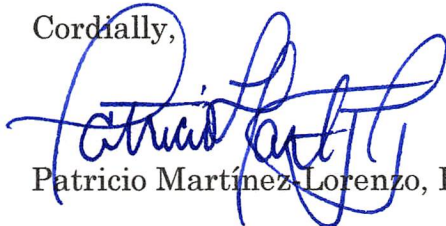
In order to help to establish Requester's status for purposes of determining the applicability of any fees, you should know that Requester is a for profit corporation and the records sought are related to its condition as a defendant in *United States of America v. Aireko Construction Company*, Crim. No. 15-448. Requester is willing to pay reasonable fees and requests being informed before fees are incurred.

3. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the listed letterhead office address. Please send them on a rolling basis: EPA's search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. See generally 40 C.F.R. § 2.104 (describing response deadlines). If EPA concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you

Cordially,



Patricio Martínez-Lorenzo, Esq.

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cc. Ms. Wanda Calderón, calderon.wanda@epa.gov, EPA, Region 2, Public Affairs Office

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